



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NY 10007-1866

JUN 7 2013

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

**Article Number: 7005 3110 0000 5952 6286**

Alfred A. Gatta, Village Manager  
Village of Scarsdale  
1001 Post Road  
Scarsdale, New York 10583

Re: Administrative Order CWA-02-2013-3033  
Village of Scarsdale  
SPDES Permit No. NYR20A307  
Clean Water Act Compliance Order and Information Request


Dear Mr. Gatta:

Please find enclosed a combined Administrative Compliance Order and Information Request, which the United States Environmental Protection Agency ("EPA"), Region 2, is issuing to the Village of Scarsdale pursuant to Sections 308 and 309 of the Clean Water Act ("CWA"), 33 U.S.C. § 1251 *et seq.* EPA is issuing the Compliance Order because the Village of Scarsdale is in violation of Section 301 of the CWA, 33 U.S.C. § 1311. The Village of Scarsdale has failed to comply with the State Pollutant Discharge Elimination System ("SPDES") General Permit for Storm Water Discharges from Municipal Separate Storm Sewer Systems ("MS4s") by failing to implement a comprehensive illicit discharge detection and elimination program. The Information Request requires the Village of Scarsdale to provide specific information to EPA regarding the Village of Scarsdale's efforts to return to compliance with the CWA and its permit.

Enclosed are two originals of the Administrative Compliance Order and Information Request. Please complete and sign the acknowledgment of receipt of one of the originals and return it by mail in the enclosed envelope. Failure to comply with the enclosed Administrative Compliance Order and/or Information Request may subject the Village of Scarsdale to civil/criminal penalties pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

If you have any questions regarding the Administrative Compliance Order and Information Request, please contact Ms. Justine Modigliani, Chief, Compliance Section, at (212) 637-4268 or Mr. Jerry Ciotola, Environmental Engineer, at (212) 637-4223.

Sincerely,

  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

Enclosures

cc: Joseph DiMura, P.E., Director, Bureau of Water Compliance Programs, NYSDEC  
Patrick Ferracane, Env. Program Specialist, Region 3, NYSDEC

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

**IN THE MATTER OF:**

Alfred A. Gatta, Village Manager  
Village of Scarsdale  
1001 Post Road  
Scarsdale, New York 10583

**SPDES Permit No. NYR20A307**

**Respondent**

Administrative Order for Compliance and  
information request pursuant to Sections  
309(a) and 308 of the Clean Water Act, 33  
U.S.C. §§ 1319 and 1318.

**ADMINISTRATIVE COMPLIANCE ORDER  
AND  
INFORMATION REQUEST**

**CWA-02-2013-3033**

**STATUTORY AUTHORITY**

The following Findings of Fact, Conclusions of Law and Compliance Order ("Order") are made and issued pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a). The following Information Request is made pursuant to Section 308 of the Clean Water Act ("CWA"), 33 U.S.C. § 1318. This Authority has been delegated by the Administrator of the United States Environmental Protection Agency ("EPA") to the Regional Administrator, EPA Region 2 and further delegated to the Director of the Division of Enforcement and Compliance Assistance, EPA Region 2.

1. Section 301(a) of the CWA, 33 U.S.C. § 1311 (a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, inter alia, with the authorization of, and in compliance with, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
2. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), authorizes the Administrator of EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. The New York State Department of Environmental Conservation ("NYSDEC") is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA. Additionally, under the authority granted to the NYSDEC by the EPA under Section 402(b) of the CWA, 33 U.S.C. 1342(b), a State Pollutant Discharge Elimination System ("SPDES") permit is required to be issued to facilities by the NYSDEC for the discharge of pollutants from a point source to a navigable water of the United States.
3. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of storm water.

4. Section 402(p)(3)(B), 33 U.S.C. § 1342(p)(3)(B), requires that NPDES permits for discharges from an MS4 include a requirement to effectively prohibit non-storm water discharges into the storm sewers; controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods; and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.
5. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), EPA promulgated regulations at 40 C.F.R. § 122.26 setting forth the NPDES permit requirements for storm water discharges, including the following:
  - (a) 40 C.F.R. § 122.26(9)(i) requires operators of regulated small MS4s to obtain an NPDES permit for discharges entirely of storm water.
  - (b) 40 C.F.R. § 122.26(b)(16)(ii) defines “small municipal separate storm sewer system,” in part, as not defined as “large” or “medium” municipal separate storm sewer systems;
  - (c) 40 C.F.R. § 122.32(a)(1) establishes that small MS4s located in an urbanized area (as determined by the latest Decennial Census by the Bureau of the Census) are regulated small MS4s.
  - (d) 40 C.F.R. § 122.26(b)(3) defines “incorporated place,” in part, as a city, town, township, or village that is incorporated under the laws of the State in which it is located;
6. Section 308 of the CWA, 33 U.S.C. § 1318, provides, in relevant part, that the Administrator of EPA may require the owner or operator of any point source to, among other things: establish and maintain such records; make such reports; install, use and maintain such monitoring equipment; sample such effluents; and provide such other information as may reasonably be required to carry out the objectives of the CWA.
7. “Person” is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), to include an individual, corporation, partnership, association or municipality.
8. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to include among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged to water.
9. “Point source” is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to include any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
10. “Navigable waters” is defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), to include the waters of the United States.
11. “Discharge of a pollutant” is defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12), to include any addition of any pollutant to navigable waters from any point source.

12. Section 309(a) of the CWA, 33 U.S.C. § 1319(a) authorizes the Administrator to issue and order requiring compliance or commence a civil action when any person is found to be in violation of Section 301 of the CWA, 33 U.S.C. § 1311, or in violation of any permit condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Director makes the following findings of fact and conclusions of law:

1. The Village of Scarsdale is a municipal corporation chartered under the laws of the State of New York, is a person, as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and is an incorporated place as that term is defined in 40 C.F.R. § 122.26(b)(3).
2. The Village of Scarsdale, with a population of 17,166, owns and operates the MS4, located in the incorporated Village of Scarsdale, Westchester County, New York and is an owner or operator within the meaning of 40 C.F.R. § 122.2.
3. The MS4 in the Village of Scarsdale is a small MS4 located in a urbanized area within the meaning of 40 C.F.R. § 122.26(b)(16)(ii) and 40 C.F.R. § 122.32(a)(1).
4. The Village of Scarsdale MS4 discharges pollutants from point sources as defined by Section 502 of the CWA, 33 U.S.C. § 1362, to the Bronx, Hutchinson and Sheldrake Rivers, and ultimately to the Long Island Sound.
5. The Long Island Sound, Bronx, Hutchinson and Sheldrake Rivers are navigable waters within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.
6. The Long Island Sound, Bronx, Hutchinson and Sheldrake Rivers are listed on New York's Clean Water Act Section 303(d) list ("Impaired Waters List" or "303(d) List"). Floatables and pathogens have been identified as pollutants of concern.
7. A SPDES General Permit for Stormwater Discharges from MS4s was issued by NYSDEC on March 4, 2003 (GP-02-02), expired on March 4, 2008, and was administratively extended until a new general permit (GP-0-08-002) was issued on May 1, 2008. GP-0-08-002 expired on April 30, 2010. The current permit GP-0-10-002 has an effective date of May 1, 2010 and expiration date of April 30, 2015.
8. The Village of Scarsdale applied for and received authorization (authorization number NYR20A307) under the SPDES General Permit for Stormwater Discharges from MS4s (GP-02-02) in March 2003, for storm water discharges from its MS4.
9. The SPDES General Permit for Stormwater Discharges from MS4s authorizes the Village of Scarsdale to discharge stormwater (and certain limited non-stormwater discharges) from its MS4 under conditions and limitations prescribed in the permit.
10. Part IV of GP-0-10-002 requires Permittees to implement a Storm Water Management Program ("SWMP").

11. Part VII.A.3 of GP-0-10-002 requires, in part, that Permittees develop, implement and enforce an Illicit Discharge Detection & Elimination Program, including the identification (trackdown) and removal of illicit connections and non-storm water discharges into the MS4. Permittees must also prepare a report including the findings of their MS4 inspections and the illicit discharges detected and eliminated.
12. On November 26 and 27, 2012, EPA conducted MS4 compliance inspections of the Village of Scarsdale MS4, pursuant to Section 308 of the CWA, 33 U.S.C. § 1318 (hereafter the "MS4 inspection").
13. Based on these inspections, EPA identified discharges from the MS4 which appeared to contain sanitary sewage. Based on these observations, it was determined that a follow-up sampling inspection should be performed during wet weather conditions.
14. An inspection report for the November 26 and 27, 2012 MS4 inspection, with findings, was transmitted to the Village of Scarsdale on December 11, 2012.
15. On February 4, 2013, the Village of Scarsdale acknowledged receipt EPA's inspection report and findings, and included a reply identifying specific measures implemented by the Village of Scarsdale to resolve the areas of concern that were identified by EPA as potential sources of illicit discharges.
16. On February 27, 2013, EPA conducted wet weather sampling inspections at various MS4 outfalls within the Village of Scarsdale, including sampling for fecal coliform and total coliform. The sampling results verified that certain Village of Scarsdale MS4 outfalls were discharging fecal coliform and/or total coliform in excess of the NY Water Quality Standards of 2,000 MPN /100ml and 10,000 MPN /100ml respectively.
17. The result of EPA's sampling are:

<u>Location</u>	<u>Coliform</u>	
	<u>Fecal</u>	<u>Total</u>
H4: South Woods and East Woods Road (Hutchinson River watershed)	1,700 MPN/100ml	17,000 MPN/100ml
BR11: River Road (Bronx River watershed)	7,900 MPN/100ml	23,000 MPN/100ml

18. The sampling conducted by EPA on February 27, 2013 supports a finding that there are illicit discharges to the Village of Scarsdale MS4 and ultimately, the Hutchinson and Bronx Rivers.
19. Based upon the field observations and sampling, EPA found that the Village of Scarsdale failed to comply with the MS4 permit by failing to implement a comprehensive illicit discharge detection and elimination program.

20. Scarsdale's failure to comply with the requirements of the MS4 permit issued under Section 402 of the CWA, 33 U.S.C. § 1342, is a violation of Section 301 (a) of the CWA, 33 U.S.C. § 1301(a).

### **SECTION 309(A)(3) COMPLIANCE ORDER**

Based on the foregoing Findings and pursuant to the authority of Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), it is hereby ORDERED that:

1. Immediately upon receipt of the original copies of this Order, a responsible official of the Village of Scarsdale shall complete and sign the acknowledgment of receipt of one of the originals of the Order and return said original to the Chief, Compliance Section, Water Compliance Branch, Division of Enforcement and Compliance Assistance, in the enclosed envelope to the address listed in the General Provisions Section below.
2. The Village of Scarsdale shall fully implement Part 4 of its Stormwater Management Program dated November 2012 (revised), and Part VII.A. of GP-0-10-002.
3. In accordance with the schedule below, the Village of Scarsdale shall: conduct wet weather and dry weather sampling; implement a trackdown program utilizing the Village of Scarsdale's storm water conveyance system mapping at points where major system segments converge, to identify illicit connections and other potential sources of pathogens to the MS4; and identify sub-segments determined to be contributing to the discharge of pathogens. Specifically, the Village of Scarsdale shall:

<u>Item</u>	<u>To be completed no later than</u>
Identify segments of Scarsdale's storm sewer system (pipes, catch basins, and manholes) associated with the outfalls identified by EPA compliance and sampling inspections.	June 30, 2013
Conduct water quality sampling at outfalls receiving flow from the adjoining municipalities of the City of White Plains and the Town of Greenburgh.	August 31, 2013
Identify and sample locations upstream from outfalls H4 and BR11 where major system segments converge, for the purpose of identifying segments that are not contributing pathogens to the MS4.	October 31, 2013
Conduct outfall sampling to identify the sources of pathogens, eliminate all illicit connections to the MS4 and take immediate steps to remediate the cause of the pathogen discharges to Scarsdale's stormwater conveyance system.	March 31, 2014

4. The Village of Scarsdale shall continue to submit all reports required by GP-0-10-002.

### **SECTION 308 INFORMATION REQUEST**

Based on the Findings above, and pursuant to the authority of Sections 308(a) of the CWA, 33 U.S.C. § 1318(a), the Village of Scarsdale is required to report the following to EPA in writing:

1. Beginning on May 31, 2013 and every month thereafter until compliance with the Compliance Order, the Village of Scarsdale shall submit monthly progress reports to EPA and NYSDEC documenting all actions, sampling results and costs associated with compliance with the Compliance Order.
2. On April 30, 2014, the Village of Scarsdale shall submit a final report to EPA and NYSDEC documenting all findings and actions taken to come into compliance with the Compliance Order.
3. All information required to be submitted under the Compliance Order and Information Request shall be sent by registered mail or its equivalent to the following address:

Douglas McKenna, Chief  
Water Compliance Branch  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway - 20th floor  
New York, New York 10007-1866

### **GENERAL PROVISIONS**

1. Any documents to be submitted by Respondent as part of this Order shall be sent by certified mail or its equivalent and shall be signed by an authorized representative of the respective entity (see 40 CFR § 122.22), and shall include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

2. The Respondent shall have the opportunity, for a period of twenty (20) days from the effective date of this Order, to confer, regarding the Ordered Provisions, with the following designated Agency representative:

Doughlas McKenna, Chief  
Water Compliance Branch  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway - 20th floor  
New York, New York 10007-1866  
212-637-4244

3. Respondent may seek federal judicial review of the CWA Section 309(a)(3) Compliance Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
4. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the CWA, its implementing regulations, or any applicable permit, which remain in full force and effect. This Order is an enforcement action taken by EPA to ensure swift compliance with the CWA. Issuance of this Order shall not be deemed an election by EPA to forego any civil or criminal actions for penalties, fines, imprisonment, or other appropriate relief under the CWA.
5. Notice is hereby given that failure to comply with the terms of the CWA Section 309(a)(3) Compliance Order may result in your liability for civil penalties for each violation of up to \$37,500 per day under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R., Part 19. Upon suit by EPA, the United States District Court may impose such penalties if the Court determines that you have violated the CWA as described above and failed to comply with the terms of the Compliance Order. The District Court has the authority to impose separate civil penalties for any violations of the CWA and for any violations of the Compliance Order.
6. Notice is hereby given that failure to comply with the requirements of the CWA Section 308 Information Request may result in your liability for civil penalties for each violation of up to \$37,500 per day under Section 309(d) of the CWA, as modified by 40 C.F.R. Part 19. Upon suit by EPA, the United States District Court may impose such penalties if the Court determines that you have failed to comply with the terms of the Information Request. You may also be subject to administrative remedies for a failure to comply with the Information Request as provided by Section 309 of the CWA.
7. If any provision of this Order is held by a court of competent jurisdiction to be invalid, any surviving provisions shall remain in full force and effect.
8. This Order shall become effective upon the date of execution by the Director, Division of Enforcement and Compliance Assistance.

Dated: JUNE 7, 2013

Signed: \_\_\_\_\_

Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

**IN THE MATTER OF:**

Alfred A. Gatta, Village Manager  
Village of Scarsdale  
1001 Post Road  
Scarsdale, New York 10583

**SPDES Permit No. NYR20A307**

**Respondent**

Administrative Order for Compliance and  
information request pursuant to Sections  
309(a) and 308 of the Clean Water Act, 33  
U.S.C.

**ADMINISTRATIVE COMPLIANCE ORDER  
AND  
INFORMATION REQUEST**

**CWA-02-2013-3033**

**ACKNOWLEDGMENT OF RECEIPT OF  
COMPLIANCE ORDER AND INFORMATION REQUEST**

I, \_\_\_\_\_, an official of Village of Scarsdale

with the title of, \_\_\_\_\_, do hereby acknowledge the receipt of copy of the  
COMPLIANCE ORDER AND INFORMATION REQUEST, CWA-02-2013-3033.

DATE: \_\_\_\_\_

SIGNED: \_\_\_\_\_